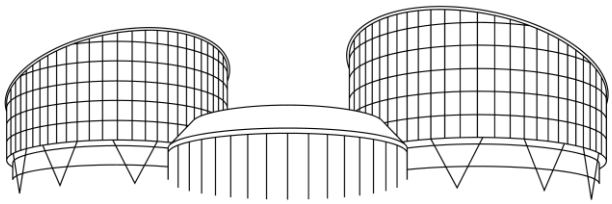

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 14434/09
Eleni MELEAGROU and others
against Turkey

The European Court of Human Rights (Fourth Section), sitting on 2 April 2013 as a Chamber composed of:

Ineta Ziemele,*President*,
David Thór Björgvinsson,
Päivi Hirvelä,
Işıl Karakaş,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having regard to the above application lodged on 22 June 2010,

Having deliberated, decides as follows:

# THE FACTS

## A. The circumstances of the case

1. The applicants, born in 1954, 1928, 1957 and 1953, are Cypriot citizens resident in Nicosia or London. They are represented by the AIRE Centre in London.

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. The applicants, a mother, and three adult siblings, Cypriot citizens, living in London, claimed to be the owners of 18 separate plots of land, one of which contained the family's second home, all of which were in the occupied area of the "TRNC" ("the Turkish Republic of Northern Cyprus").

4. On 7 November 2006 the applicants filed claims with the Immovable Property Commission ("IPC") claiming restitution of this property and damages for loss of use and non-pecuniary damage. On October 2007, there was a directions hearing before the IPC, which required the production of further documents. A preliminary hearing took place on 19 November 2007 at which the "TRNC" representative made an offer of settlement. The IPC adjourned the case pending the applicants' response to the offer of settlement. A number of preliminary hearings were listed and adjourned during 2008, during which the applicants claimed further attempts were made to obtain their agreement to a settlement. The applicants lodged a written request on 4 August 2008 for a hearing of their claims.

5. The IPC held hearings on the claims on 3 November 2008, 19 January 2009 and 5 May 2009. On 14 October 2009, the IPC issued its decisions. Of the 18 properties in issue, it found that the applicants were not the registered owners of 14 properties, which were held by a registered company of which the applicants were shareholders still in existence. Of the other properties, restitution was ordered in respect of part of one plot (583/2); as no particulars had been given of loss of use, no award was made for pecuniary loss and as the land had been uninhabited no award for non-pecuniary loss was made. Restitution was refused in respect of the other plots as the property was either occupied by a refugee family or by the military. The claims for non-pecuniary compensation and loss of use were rejected as these could not be made under the law where restitution was refused and where no claim had been lodged for exchange of land or for pecuniary compensation for the land.

6. The applicants lodged appeals to the High Administrative Court on 30 December 2010 and 4 January 2010. The appeals were listed for hearing on 14 January 2011. By three decisions dated 27 June 2011, the court upheld the decisions of the IPC, noting that the applicants had been represented by a lawyer at the hearing and that there had been interpretation into English at the hearing. It found that the IPC had not erred in its application of the law, citing the provisions concerned.

### B. Relevant domestic law and practice

7. The relevant law and practice are set out in *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, ECHR 2010.

# COMPLAINTS

8. The applicants complained under Article 1 of Protocol No. 1 and Article 8, separately and in conjunction with Article 14 about the continuing denial of access to and enjoyment of their properties and second home.

9. The applicants complained under Article 6 principally that there had been lengthy delays; difficulties in languages as the proceedings were mostly in Turkish and the appearance of lack of independence of the IPC members. They complained that the IPC and High Administrative Court had failed to address their claims for non-pecuniary damage under Article 8.

# THE LAW

## A. Complaints raised under Article 1 of Protocol No. 1, Article 8 and 14 of the Convention

10. The applicants complained that they were denied enjoyment of, and access to, eighteen properties located in the northern area of Cyprus, invoking Article 1 of Protocol No. 1 which provides as relevant:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. ..."

11. They invoked Article 8 of the Convention (respect for home) in respect of their inability to enjoy a property which had been used as a second home and Article 14 of the Convention (prohibition of discrimination in the enjoyment of Convention rights) in that they suffered these violations due to their status as Greek Cypriots.

### As regards the complaint concerning 14 plots of land owned by a registered company

12. The Court finds that these complaints fail as incompatible *ratione materiae*. As shareholders, the applicants cannot claim property rights in the land owned by a company which is still in existence (see *Agrotexim and Others v. Greece*, 24 October 1995, § 66, Series A no. 330-A).

### As regards the complaint concerning the ongoing refusal to return to them four other plots of land

13. The Court recalls that similar issues arose in *Demopoulos and Others v. Turkey* [GC] (no. 46113/99 et al, decision of 1 March 2010, ECHR 2010-...). In that case the Grand Chamber examined the issue of

whether Greek-Cypriot applicant property-owners had available to them a remedy in respect of their complaints concerning property in the northern part of Cyprus. It found that for the purposes of Article 35 § 1 of the Convention, the procedure before the IPC, and further appeal to the "TRNC" High Administrative Court, provided for in Law 67/2005 were to be regarded as "domestic remedies" of the respondent State and that no ground of exemption from the application of Article 35 § 1 of the Convention has been established in that respect. As to the efficacy of the framework of redress provided, it held:

> "127. The Court finds that Law 67/2005 provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots. The applicant property owners in the present cases have not made use of this mechanism and their complaints under Article 1 of Protocol No. 1 to the Convention must therefore be rejected for non-exhaustion of domestic remedies. It is satisfied that Law 67/2005 makes realistic provision for redress ..."

14. In the present case, the applicants did present their claims to the IPC. However, it is apparent that while they took proceedings to obtain restitution of their property, they did not make claims in those proceedings for either exchange of land in the south or for pecuniary compensation for the land which would also have permitted the award of damages for loss of use or non-pecuniary compensation if restitution was not afforded. In *Demopoulous*, the Court held that restitution did not have to be afforded in every case. The range of remedies available before the IPC, which included not only restitution but exchange of land and the payment of pecuniary compensation and non-pecuniary compensation, was found to be effective in the circumstances (see *Demopoulos*, cited above, §§ 106-119). In the present case, the IPC awarded restitution in respect of only one plot and did not award pecuniary damages for loss of use as no particulars had been submitted in that regard by the applicants. No non-pecuniary damage was awarded as the land had not been inhabited and was not used as a home. For the other plots of land, the applicants had not made any other claims except restitution which was not awarded and so other redress in the form of exchange or monetary compensation could not be made either under the terms of the applicable law.

15. It follows that the applicants have not made proper use of the available remedies that could give them financial redress or redress in kind for loss of enjoyment of their properties, including the property previously used as a second home. The fact that the applicants did not want to claim redress which would have led to them giving up their claim of title to the land is not relevant to this assessment. It was their choice, but it excluded them from obtaining the other available remedies.

16. Accordingly, this part of the application must be rejected for failure to comply with Article 35 § 1 of the Convention.

## B. Complaints under Article 6 § 1 of the Convention

17. The applicants complained of the length of the proceedings, a lack of independence of the IPC and the unfairness of the proceedings, invoking Article 6 § 1 which provides as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

18. As regards the applicants' complaints about the length of the proceedings, the Court notes that the applicants' claims were lodged before the IPC on 7 November 2006 and were determined on appeal on 27 June 2011: namely a period of some four years and eight months at two levels. This is not unreasonable given the newness of the procedure, the nature of the proceedings which incorporated a specific settlement procedure, the number of claims raised and the technical nature of property disputes.

19. As regards the applicants' complaints about language difficulties in the IPC and High Administrative Court where the proceedings were run principally in Turkish, the Court notes that the applicants were represented by a lawyer who understood Turkish, they had interpretation facilities at the hearings and they were able to obtain translations into English of key documents. No indication of unfairness arises in the circumstances.

20. The applicants' complaints about lack of independence: these claims are based largely on their general perception of the manner in which the Turkish-speaking members sitting on the IPC interacted with "TRNC officials" and responded to their arguments. The Court does not find however that the applicants have provided any concrete elements sufficient to establish bias or lack of independence.

21. The applicants also complained that the IPC and High Administrative Court failed to address all their arguments. While a failure by a court to address one or more of an applicant's grounds of claim may disclose unfairness in particular circumstances, the Court finds in the present case that the decisions of the IPC and High Administrative Court contained reasons for rejecting the claims made by the applicants. While there was no express mention of Article 8 in their decisions, it is nonetheless apparent from the reasoning that no award for non-pecuniary damages was made as the applicants had not made claims in accordance with the provisions of the applicable law, and, as regards the one plot of land which had been subject to restitution, the IPC considered that as it was a field, no non-pecuniary damage from loss of enjoyment had been shown to arise.

22. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President